IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITON NO.3962 OF 2005

Dr.Vijay Shantaram Pradhan .. Petitioner

v/s.

Vilas R. Patankar & ors. .. Respondents

Mr.P.G.Karande for the petitioner.

Mr.C.R.Dalvi i/by Mr.K.Y.Mandlik for the respondents.

CORAM : SMT.NISHITA MHATRE, J.

DATED : 21st September, 2005

P.C.

This petition challenges the order in revision application No.229 of 2004 and revision application No.235 of 2004. Rule has been discharged in these revision applications. The petitioner claims to be the co-owner of the tenanted property known as Shanti Sadan, Sakharam Keer Marg, Mahim, Mumbai. The petitioner resides in a flat of about 520 sq.ft. A suit was filed by the petitioner against the respondent No.1 on the ground of bonafide requirement. The brothers of the petitioner who are Respondent No.2 and Respondent No.3 have also filed an eviction suit against the same tenant on the same ground. The petitioner withdrew his suit in January, 1994 on account of the oral assurances given by the brothers of the petitioner viz. respondent Nos.2 and 3.

2. The respondent Nos.2 and 3 filed RAE Suit

No.136/312 of 1994 against the tenant for recovery of possession of the suit premises on the ground of bonafide requirement and acquisition of alternate premises. The petitioner was party defendant to this suit. An application was filed by the petitioner for transposing him as a plaintiff in the suit. However, it was dismissed. The petitioner then filed suit bearing No.121/244/1996 against the tenant on the ground of bonafide requirement and his brothers, co-owners, were joined as defendants. By order dated 12.12.1997, the two suits were directed to be heard together and the trial court to decide whether the common evidence should be led or not. By an order dated 25th September, 2002 passed in the above suits, the trial court recorded that the evidence led in RAE Suit No.136/312 of 1994 should be treated as evidence in RAE Suit No.121/244 of 1996. It appears that two affidavits were filed by respondent No.1, one in each suit. The respondent No.1-tenant was cross-examined at length in RAE Suit No.136/312 of 1994 before the Commissioner appointed by the court. However, there was no cross-examination of the respondent in respect of the affidavit filed by him in RAE Suit No.121/244 of 1996. The petitioner, therefore, sought permission to cross-examine him in that suit. Permission was denied by the trial court on the ground that the evidence in both the suits is to be treated as common. The revisions filed by him were dismissed as infructuous. It is these orders which are challenged in the present petition.

3. Nobody appears for the tenant. An affidavit of service is taken on record.

4. It appears that after the evidence was recorded in RAE Suit No.136/312 of 1994, an application was tendered on 10th March, 2005 by the petitioner wherein it was mentioned that since the evidence was recorded in both the suits, he should be permitted to adopt the cross-examination of the defendant No.1 in RAE Suit No.121/244 of 1996. However, there is no dispute that the affidavit filed by the tenant in RAE Suit No.121/244 of 1996 remains on record. The petitioner must be permitted to cross-examine the tenant in respect of the affidavit filed by him in RAE Suit No.121/244 of 1996.

5. In my view, the judgments of both the courts below must be set aside. Although the evidence recorded in RAE Suit No.136/312 of 1994 can be treated as evidence in RAE Suit No.121/244 of 1996, the petitioner must have an opportunity to cross-examine the tenant in respect of the affidavit filed by him in RAE Suit No.121/244 of 196. The trial court would, therefore, permit the petitioner to cross-examine the tenant on the affidavit filed by the tenant in RAE Suit No.121/244 of 1996. This exercise must be completed within the period of four weeks from today. Petition is disposed of accordingly. No order as to costs.

(SMT.NISHITA MHATRE, J.)